

LITIGATION ROSTER

SALES AND USE TAX

SEPTEMBER 2008

**Sales and Use Tax
September 2008**

NEW CASES

Case Name

Court/Case Number

REYNOLDS, ROBERT L.

Sacramento Superior Court No. 34-2008-00020131

CLOSED CASES

Case Name

Court/Case Number

BARNESANDNOBLE.COM LLC
Barnesandnoble.com llc

USDC, Eastern Dist. CA No. 2:07CV2776-W
San Francisco Superior Court No. CGC 06-456465

SALES AND USE TAX

LITIGATION ROSTER

September 2008

ASPECT SOFTWARE, INC. v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-468134

Plaintiff's Counsel

James P. Kleier

Reedsmith LLP

Filed – 10/12/07

BOE's Counsel

Joyce Hee

BOE Attorney

Jeffrey Graybill

Issue(s): Whether tax applies to plaintiff's charges for what it alleges were intangible software license fees, and whether the charges should be excluded from tax as sales made pursuant to technology transfer agreements ([Regulation 1502](#)).

Audit/Tax Period: 10/01/00-12/31/00

Amount: \$804,778.84

Status: Trial is scheduled for January 12, 2009. The parties have agreed to request a trial continuance from the court, to enable the parties to complete discovery and prepare motions for summary judgment.

BARONA BAND OF MISSION INDIANS v. John Chiang, et al.

U.S. Court of Appeals, Ninth Circuit Case No. 06-55918

USDC, So. Dist. CA Case No. 05-CV-0257-IEG (POR)

Plaintiff's Counsel

Art Bruce, Kathryn Clenney

Law Offices of Art Bruce

Filed – 02/07/05

BOE's Counsel

Leslie Branman-Smith

BOE Attorney

Jeffrey Graybill

Issue(s): Whether sales of electrical materials by a subcontractor on the Tribe's casino and resort properties are exempt as sales to an Indian tribe (Regulations [1521](#) and [1616](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The Ninth Circuit Court of Appeals issued its published opinion on June 18, 2008, reversing the district court's decision in favor of Barona. On June 30, 2008, Barona filed requests for rehearing with the 9th Circuit Court of Appeals. In an Order entered August 25, 2008, the Court of Appeals denied Barona's petition for panel rehearing and its petition for rehearing en banc. Barona has until November 24, 2008 to file a writ of certiorari with the United States Supreme Court.

CALIFORNIA OFFSET PRINTERS, INC. v. State Board of Equalization of the State of CA

Los Angeles Superior Court Case No. BC392582

Plaintiff's Counsel

Marty Dakessian, Shriaz Simonian

Akerman, Senterfitt LLP

Filed – 06/12/08

BOE's Counsel

Brian Wesley

BOE Attorney

John Waid

Issue(s): (1) Whether plaintiff's retail sales of special printing aids are subject to tax, (2) whether plaintiff is entitled to a refund of tax paid on purchases of thermal plates that were resold, and (3) whether plaintiff properly exhausted its administrative remedies (Regulations [1541](#), [1541.5](#), [1590](#), and [1701](#)).

Audit/Tax Period: 07/01/00-06/30/03

Amount: \$0.00

Status: BOE was granted an extension until October 8, 2008 to file its responsive pleading.

CARDINAL HEALTH 110, INC. v. State Board of Equalization of the State of California

San Francisco Superior Court Case No. CGC 04-437052

Filed – 12/13/04

Court of Appeal, First Appellate District Case No. A-114257, A-114273

BOE's Counsel

Plaintiff's Counsel

Joyce Hee

Jeffrey M. Vesely, Richard E. Nielsen

BOE Attorney

Pillsbury, Winthrop LP

John Waid

Issue(s): Whether the sales of insulin syringes, test strips, and skin puncture lancets to hospitals for use on their patients are subject to tax ([Revenue and Taxation Code 6369](#); [Regulation 1591.1](#)).

Audit/Tax Period: 07/01/93-09/30/96

Amount: \$525,387.64

Status: By an unpublished decision, the First District Court of Appeal concluded that while sales of insulin syringes were exempt from tax, sales of insulin test strips and skin puncture lancets were not. Case remanded to superior court to determine amount of refund due.

CARR BAZAAR, INC. v. State Board of Equalization

Fresno Superior Court Case No. 07 CE CG 04154 DRF

Filed – 12/12/07

Plaintiff's Counsel

BOE's Counsel

Lenden F. Webb

George C. Spanos

Wild, Carter & Tipton

BOE Attorney

John Waid

Issue(s): Whether the BOE is utilizing a proper formula to assess a deficiency arising out of an audit ([Regulation 1705](#)).

Audit/Tax Period: 01/01/00-12/31/02

Amount: \$76,884.13

Status: Hearing on BOE's Demurrer to the First Amended Complaint was held September 25, 2008. The court granted the demurrer as a whole being filed by the wrong party, but granted plaintiff's attorney 20 days' leave to amend to name the correct plaintiff. The court overruled BOE's demurrer to the first cause of action for declaratory relief. Pending filing of plaintiff's second amended complaint.

CONNELL, WILLIAM M., et al. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00012293

Filed – 06/04/08

Plaintiff's Counsel

BOE's Counsel

William M. Connell

Jane O'Donnell

In Pro Per

BOE Attorney

Robert J. Stipe

Issue(s): Whether [Business and Professions Code section 16102](#) exempts plaintiff from paying sales or use tax.

Audit/Tax Period: 1993 to present

Amount: Unspecified

Status: Order and Judgment of Dismissal was entered September 4, 2008. Notice of Entry of Judgment was served by mail on September 24, 2008. Pending appeal.

DAIMLERCHRYSLER CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-459702

Plaintiff's Counsel

Jon D. Universal

Universal Shannon & Wheeler LLP

Filed – 01/18/07

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether the plaintiff is owed a refund of use tax it refunded under [Civil Code section 1793.25](#) to customers who leased vehicles that had defects that could not be repaired after a reasonable number of attempts.

Audit/Tax Period: 10/01/01-01/10/05

Amount: \$2,000,000.00

Status: At the hearing on the cross motions for summary judgment on September 17, 2008, the court adopted its tentative ruling denying BOE's motion, and granting plaintiff's motion. Hearing on the motion to continue the trial date to November 3, 2008 is scheduled for October 21, 2008.

GENERAL ELECTRIC CAPITAL CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 08-471479

Plaintiff's Counsel

Amy L. Silverstein, Edwin P. Antolin

Silverstein & Pomerantz LLP

Filed – 01/28/08

BOE's Counsel

Burr/Yiu

BOE Attorney

Jeffrey Graybill

Issue(s): Plaintiff is a lender who purchased receivables from retailers, and the debts have gone bad. Plaintiff asserts that it is entitled to take a bad debt deduction ([Regulation 1642](#)).

Audit/Tax Period: 01/01/94-03/31/01

Amount: \$6,983,601.83

Status: Mandatory Settlement Conference has been moved from December 31, 2008 to March 11, 2009. The trial date was continued from January 12, 2009 to March 30, 2009.

HAWARI, AHMED v. State of California/ State Board of Equalization

Fresno Superior Court Case No. 08 CE CL 07665

Plaintiff's Counsel

Ahmed Hawari

In Pro Per

Filed – 07/28/08

BOE's Counsel

Robert E. Asperger

BOE Attorney

Dana Flanagan-McBeth

Issue(s): As to the merits of the Complaint, if it were properly pleaded and served, plaintiff is contending that his liability never became final, and is now time barred, because the Notice of Redetermination that was issued to him never reflected the reduction in tax resulting from the re-audit (Revenue and Taxation Code [6561](#), [6561.5](#), [6562](#), [6563 subd. \(a\)](#), [6561](#), [6565](#), [6566](#)).

Audit/Tax Period: 07/01/93-09/30/96

Amount: \$0.00

Status: Plaintiff mailed the Complaint to the Board's Fresno Branch Office. Proper service has not been effected. The Complaint was forwarded to the AG's office for whatever action deems necessary on behalf of the BOE.

HERON, MICHAEL DION v. L. Albin, et al.

Los Angeles Superior Court Case No. LC081016

Plaintiff's Counsel

Michael Dion Heron

In pro per

Filed – 04/04/08

BOE's Counsel

Christine Zarifian

BOE Attorney

Robert J. Stipe

Issue(s): Whether plaintiff's Sales and Use Tax seller's permit was cancelled by the BOE without just cause ([Revenue and Taxation Code section 6072](#); [Regulation 1699](#)).

Audit/Tax Period: None

Amount: \$20,000,000.00 in gold &
\$30,000 in attorneys' fees

Status: Order Granting BOE's Motion to Dismiss entered September 8, 2008. Pending appeal.

HOFSTADTER, DAVID, et al. v. The State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

Los Angeles Superior Court Case No. BC376547

Plaintiffs' Counsel

Mitch Kalcheim

Kalcheim/Salah

Filed – 08/24/07

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether Dell properly collected use tax from its customers measured by the amount of a mail-in rebate on the sales ([Revenue and Taxation Code 6011](#); [Regulation 1671](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiff's First Amended Complaint filed on May 7, 2008. Hearing on BOE's Demurrer to the First Amended Complaint and Motion to Dismiss has been continued from September 10, 2008 to October 28, 2008.

HSBC RETAIL SERVICES, INC. v. State of California Board of Equalization

San Francisco Superior Court Case No. CGC 07-469572

Plaintiff's Counsel

Donald J. Querio, Erik Kemp

Severson & Werson

Filed – 11/28/07

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Jeffrey Graybill

Issue(s): Plaintiff is a lender who purchased receivables from retailers, and the debts have gone bad. Plaintiff asserts that it is entitled to take a bad debt deduction ([Regulation 1642](#)).

Audit/Tax Period: 10/01/97-12/31/02

Amount: \$9,158,743.00

Status: Mandatory Settlement Conference has been rescheduled for April 7, 2008. The trial has been rescheduled for April 27, 2008.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

Filed – 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Issue(s): Whether plaintiff can exempt from tax its charges for special printing aids ([Regulation 1541](#)).

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

KASHE, MOHAMMED, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC371154

Plaintiffs' Counsel

Marty Dakessian, Aleen L. Khanjian

Dakessian & Associates, PLC

Filed – 05/16/07

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether the BOE is liable for damages under [Revenue and Taxation Code section 7099](#) for its conduct of an audit of plaintiff's business ([Revenue and Taxation Codes 6561](#) and [7053](#)).

Audit/Tax Period: 07/01/92-06/30/96 (Kashe)

Amount: Unspecified

Status: Trial court ruled in favor of BOE's demurrer on the grounds that plaintiff's claim for damages were not first submitted to the Victims Compensation Board as required by statute. Plaintiff filed Notice of Appeal March 20, 2008. The court granted appellant's application to extend the time to file his Opening Brief. Appellant's Opening Brief is now due October 22, 2008.

MARGARETICH, MITCHELL v. State Board of Equalization

San Diego County Superior Court Case No. 37-2008-00088344 CU-MC-CTL

Plaintiffs' Counsel

Mitchell Margaretich

In Pro Per

Filed – 07/24/08

BOE's Counsel

Leslie Branman Smith

BOE Attorney

W. Gregory Day

Issue(s): The issue in this case is whether or not plaintiff was a partner in a partnership that purchased and used a vessel within the State of California ([Revenue and Taxation Code sections 6201](#) and [6202](#); see [Revenue and Taxation Code section 6009](#)). BOE contends that plaintiff was in fact such a partner; that the partnership purchased and used the vessel; and plaintiff, as a partner, therefore owed the tax on the purchase and use of the vessel within California.

Audit/Tax Period: 07/01/02

Amount: \$9,300.00

Status: BOE's Answer was filed September 11, 2008.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross Complaint: Albertson's Inc, et al. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Philip J. Eskinazi, Lee A. Cirsch

Akin, Gump, Strauss, Haur & Feld LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: CVS, Inc. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Richard T. Williams

Holland & Knight LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Rite Aid v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles, Neal Salisian

Morgan, Lewis & Bockius LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Gail E. Lees, Brian Walters

Gibson, Dunn & Crutcher LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Walgreen Co. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles, Neal Salisian

Morgan, Lewis & Bockius LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McKOON, HOSMER, et al. v. The Commission of the State Board of Equalization for the State of CA

Los Angeles Superior Court Case No. BS111440

Filed – 10/09/07

BOE's Counsel

Anthony Sgherzi

BOE Attorney

Victoria Baker

Plaintiffs' Counsel

Dennis Connelly

Law Office of Dennis Connelly

Issue(s): (1) Whether the BOE's application of an eight-year statute of limitations under [Revenue and Taxation Code section 6487](#), is constitutional. (2) Whether BOE's Notice of Determination issued pursuant to [Revenue and Taxation Code section 6829](#) was timely.

Audit/Tax Period: 07/01/98-05/28/99 (Dual 07/29/04)

Amount: \$108,994.45

Status: BOE is conducting discovery. Trial is scheduled for February 9, 2009.

MERCEDES-BENZ USA, LLC v. California State Board of Equalization

San Francisco Superior Court Case No. CGC 08-471310

Filed – 01/23/08

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Jon D. Universal

Universal, Shannon & Wheeler

Issue(s): Whether the BOE has the authority to reimburse Mercedes Benz for payments it made to lessees of its cars as part of restitution payments made under the California Lemon Law that constituted returns of use tax payments the customers made on the leases.

Audit/Tax Period: None

Amount: \$2,500,000.00

Status: Mandatory Settlement Conference continued to April 21, 2009. Trial continued to May 4, 2009.

MODERN MOLD INTERNATIONAL, INC., et al. v. State Board of Equalization of the State of CA

Court of Appeal, Second Appellate District Case No. B200874

Filed – 10/31/06

Los Angeles Superior Court Case No. BC361123

BOE's Counsel

Dean Freeman

BOE Attorney

John Waid

Plaintiffs' Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lassleben & Miller, LLP

Issue(s): Whether plaintiffs make a taxable use in California of pens manufactured in Mexico intended as gifts when it transported the pens into California and deposited them with the post office for mailing to out-of-state donees ([Revenue and Taxation Codes 6009.1 and 6094](#); [Regulation 1620](#)).

Audit/Tax Period: 10/01/95-06/30/00

Amount: \$530,039.00

Status: Oral argument held September 16, 2008 – pending decision.

MOHAN, DIANE, et al. v. Dell, Inc., et al.

San Francisco Superior Court Case No. CGC 03-419192

Plaintiffs' Counsel

Jason Bergmann

Paul, Hastings, Janofsky & Walker, LLP

Filed – 11/01/04

BOE's Counsel

Julian O. Standen

BOE Attorney

John Waid

Issue(s): Whether Dell illegally collected use tax measured by the price of optional service contracts even though the contracts were not separately stated on the invoice ([Revenue and Taxation Code 6011](#); [Regulations 1546 and 1655](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court ruled that the service contracts were in fact optional and that the Dell entities should not have collected tax on their sales. Dell took up a writ of mandate on this issue to the First District Court of Appeal. In a published decision, the appeals court agreed with the trial judge. (*Dell, Inc. v. Sup. Ct.* (2008) 159 Cal.App.4th 911.) Plaintiffs' Unfair Competition Law claims are still pending. Case Management Conference continued from October 6, 2008 to November 18, 2008.

NORTEL NETWORKS INC. v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC341568

Plaintiff's Counsel

Jeffrey Varga, Julian Decyk

Paul, Hastings, Janofsky & Walker LLP

Filed – 10/17/05

BOE's Counsel

Stephen Lew

BOE Attorney

Mike Llewellyn

Issue(s): 1) Whether [Regulation 1507](#) is valid, 2) whether the software sold by Nortel is prewritten, and 3) whether the software sales agreements technology transferred agreements.

Audit/Tax Period: 01/01/94-12/31/97 (audit); 01/01/96-06/30/01 (refund) Amount: \$36,520,136.70

Status: Trial was completed May 2, 2008. Hearing on BOE's Objections to Proposed Statement of Decision is set for August 18, 2008. Hearing on BOE's Objections was continued from August 18, 2008 to August 29, 2008. The Court heard the BOE's objections and took the matter under submission.

NORTEL NETWORKS INC. v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC375660

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

Filed – 08/09/07

BOE's Counsel

Lew/Wolfe-Donato

BOE Attorney

Mike Llewellyn

Issue(s): Whether the engineering services rendered by Nortel were part of the sale of tangible personal property under [Revenue and Taxation Code sections 6011\(c\)\(10\) and 6012\(c\)\(10\)](#).

Audit/Tax Period: 01/01/94-12/31/97

Amount: \$1,054,020.00

Status: Mandatory Settlement Conference is set for November 18, 2008. Trial has been continued from September 8, 2008 to March 9, 2009.

PeoplePc, INC. v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00066036-CU-MC-CTL

Filed – 05/01/07

BOE's Counsel

Leslie Branman-Smith

BOE Attorney

Mike Llewellyn

Plaintiff's Counsel

Mark L. Mann, Jaikaran Singh

Luce, Forward, Hamilton & Scripps LLP

Issue(s): Whether the mass-mailed promotional CDs were printed sales messages under [Revenue and Taxation Code section 6379.5](#).

Audit/Tax Period: 07/01/99-06/30/02

Amount: \$486,372.83

Status: Hearing on the cross-motions for summary judgment was held September 5, 2008. In an order issued September 23, 2008, the court granted BOE's motion, and denied plaintiff's motion. Notice of Entry of Order and Judgment was served by mail on September 26, 2008.

REM CONCEPTS, INC., et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC378831

Filed – 10/09/07

BOE's Counsel

Brian Wesley

BOE Attorney

Elizabeth Abreu

Plaintiffs' Counsel

Joseph A. Vinatieri, Jason De Mille

Bewley, Lasseleben & Miller

Issue(s): (1) Whether plaintiff was a construction contractor or retailer of windows physically installed by other persons. (2) Whether plaintiff is entitled to relief from liability under [Revenue and Taxation Code section 6596](#); [Regulations 1521](#) and [1705](#).

Audit/Tax Period: 07/01/00-01/05/04

Amount: \$5,185,716.89

Status: The Board approved the settlement of this matter. Stipulation and Order entered August 18, 2008. Pending the issuance of the settlement check by the Controller's Office.

REYNOLDS, ROBERT L., et al. v. California State Board of Equalization

Sacramento County Superior Court Case No. 34-2008-00020131

Filed – 08/25/08

BOE's Counsel

Plaintiffs' Counsel
Jason W. Harrel, Richard S. Calone
Calone Law Group, LLC

Amy Winn
BOE Attorney
Sharon Silva

Issue(s): Whether plaintiff was a retailer engaged in business pursuant to [Revenue and Taxation Code section 6203](#).

Audit/Tax Period: 7/1/98 - 6/30/01

Amount: \$176,575.77

Status: BOE's answer is due October 21, 2008.

SAN MATEO, COUNTY OF v. State Board of Equalization, et al.

San Francisco Superior Court Case No. CGC 07-459514

Plaintiff's Counsel
John Nibbelin, David Silberman
San Mateo County Counsel

Filed – 06/14/06
BOE's Counsel
Kris Whitten
BOE Attorney
John Waide

Issue(s): Regulation 1699, Buying Companies, is invalid, because it allows cities to manipulate the local sales tax by letting local consumer to form buying companies to re-direct local sales tax to the location of the buying company from the locations of the vendors, and local sales taxes derived in question should be reallocated as if subdivision (h) never existed ([Revenue and Taxation Code section 1699](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: Trial is set for September 8, 2008. The court granted BOE's Motion for Judgment on the Pleadings, but allowed the County to file an amended complaint. Mandatory Settlement Conference is set for October 30, 2008. Trial has been continued to November 17, 2008.

SONOMURA, AKIRA v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL

Plaintiff's Counsel
Bob Mullen
Attorney at Law

Filed – 05/30/08
BOE's Counsel
Leslie Branman-Smith
BOE Attorney
Victoria Baker

Issue(s): (1) Whether BOE's issuance of a Notice of Determination pursuant to [Revenue and Taxation Code section 6829](#) was proper; and (2) whether BOE's Notice of Determination was timely ([Revenue and Taxation Code section 6487](#)).

Audit/Tax Period: 04/01/1993 – 03/31/1996 (dual 04/25/2002)

Amount: \$79,000.00

Status: BOE's Answer was filed July 8, 2008. Mandatory Settlement Conference is scheduled for August 20, 2008. Trial is set for September 8, 2008.

WIMATEX, INC. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00001968

Filed – 01/25/2008

Plaintiff's Counsel

Alan I. Kaplan

Law Offices of Alan I. Kaplan

BOE's Counsel

Jeff Rich

BOE Attorney

Mike Llewellyn

Issue(s): Whether the taxpayer is entitled to relief under [Revenue and Taxation Code section 6596](#) for an inapplicable exemption claimed under Revenue and Taxation Code section 6377 (repealed).

Audit/Tax Period: 01/01/00-12/31/02

Amount: \$132,487.25

Status: Hearing on BOE's Motion for Judgment on the Pleadings is scheduled for December 4, 2008.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

Los Angeles Superior Court Case No. CA000499

Court of Appeal, Second Appellate District: B113661

Filed – 06/20/78

BOE's Counsel

Diane Spencer-Shaw

Plaintiff's Counsel

James M. Gansinger

Gansinger, Hinshaw

BOE Attorney

Mike Llewellyn

Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee ([Revenue and Taxation Code sections 10753 and 10758](#)) and use tax imposed.

Audit/Tax Period: None

Amount: \$1,492.00

Status: State defendants' Notice of Appeal (from that portion of the Judgment filed May 30, 2008 awarding attorneys' fees to the plaintiff and various counsel) was filed August 1, 2008. Motions of James Gansinger and Patrick Woosley for interim Fee Awards was held August 27, 2008. State defendants' Opposition to Motions was filed August 14, 2008. The motion was denied, without prejudice. Further status conference is set for November 7, 2008.

SALES AND USE TAX
CLOSED CASES
LITIGATION ROSTER
September 2008

BARNESANDNOBLE.COM LLC v. Betty T. Yee, et al.

USDC, Eastern Dist. CA Case No. 2:07CV2776-WBS-KJM

Plaintiff's Counsel

David W. Bertoni

Brann & Isaacson LLP

Filed -01/15/08

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Issue(s): Whether the plaintiff had a substantial nexus with California to allow the BOE to impose a use tax collection duty. Plaintiff seeks declaratory and injunctive relief to preclude the BOE from imposing the use tax.

Audit/Tax Period: 05/01/00-03/31/04

Amount: Unspecified

Disposition: On May 29, 2008, the Board approved the settlement of this case. Pursuant to the terms of the settlement, plaintiff paid the BOE \$8,302,393.00, agreed to dismiss the federal court action, and BOE agreed that upon receipt of the money, it would adjust the liabilities to zero for the periods settled in the litigation. Notice of filing of Stipulation of Dismissal was received September 9, 2008.

barnesandnoble.com llc v. State Board of Equalization

Court of Appeal, First Appellate District Case No. A120834

San Francisco Superior Court Case No. CGC-06-456465

Plaintiff's Counsel

Sharon Kirsch, Michelle Tidalgo

McManis, Faulkner & Morgan

Filed -12/16/04

BOE's Counsel

David Lew

BOE Attorney

Jeffrey Graybill

Issue(s): Whether the plaintiff was a retailer engaged in business in this state and therefore had a duty to collect use tax arising from its sales within the state.

Audit/Tax Period: 11/15/99-03/31/00

Amount: \$697,607.52

Disposition: The trial court ruled in favor of plaintiff. Order Granting Plaintiff's Motion for Summary Judgment was entered October 12, 2007. BOE's Notice of Appeal was filed on February 13, 2008. On May 29, 2008, the Board approved the settlement of this case. Pursuant to the terms of the settlement, BOE will dismiss its appeal, and plaintiff agreed that BOE will retain the amount sought by plaintiff in its claim for refund. Dismissal was entered September 4, 2008.

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

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